

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications

of

CHOCK FULL O'NUTS CORPORATION

for revision or refund of franchise
taxes under Article 9-A of the Tax
Law for the fiscal years ended July
31, 1962 through July 31, 1964.

Chock Full O'Nuts Corporation having filed applica-
tions for revision or refund of franchise taxes under Article
9-A of the Tax Law for the fiscal years ended July 31, 1962
through July 31, 1964, and the facts having been agreed to by
Stipulation of Facts dated June 10, 1969, executed by Edward
H. Best, Counsel and Deputy Tax Commissioner of the State Tax
Commission, and by Harry Geist, Counsel for the taxpayer, and
the parties having waived the right to present any further
testimony at a formal hearing under Section 214 of the Tax Law,

Upon all the stipulated facts and upon the entire
record, it is hereby found:

(1) The taxpayer issued \$7,000,000 in convertible
debenture bonds on August 7, 1961 with interest payable at 4½%
per year. The funds were to be used for various corporate
purposes including the making of loans to subsidiary corpora-
tions. Based on the proportion of the funds received from the
bond issue which was used for loans to subsidiaries, interest
paid by the taxpayer on the bonds was attributed to subsidiary
capital and was disallowed as an expense in the computation
of entire net income. Additional taxes were computed as
follows:

	<u>FYE</u> <u>7/31/62</u>	<u>FYE</u> <u>7/31/63</u>	<u>FYE</u> <u>7/31/64</u>
Interest add-back	\$15,619.02	\$61,376.09	\$104,897.80
Business allocation %	91.7222	90.4333	91.9909
Base	14,326.11	55,504.42	96,496.43
Additional tax at 5½%	\$ 787.94	\$ 3,052.74	\$ 5,307.30

(2) Section 208.9(b)(6) of Article 9-A reads:

"(b) Entire net income shall be determined without the exclusion, deduction or credit of:

"(6) in the discretion of the tax commission, any amount of interest directly or indirectly and any other amount directly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital;"

The State Tax Commission hereby

DETERMINES:

(A) That, in accordance with the provisions of Section 208.9(b)(6) of Article 9-A of the Tax Law, it has been the consistent policy of the Commission to disallow interest expense attributable to Subsidiary Capital.


(B) That the interest expense disallowed herein is properly attributable to Subsidiary Capital.

(C) That the additional taxes are affirmed as assessed.

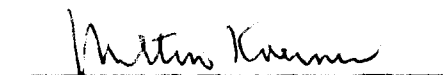
Dated: Albany, New York

this 11th day of August 1971.

STATE TAX COMMISSION


President


Commissioner


Commissioner